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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 DANIEL J. LANG,

12 Plaintiff,

13 vs.

14 CANLAS, DOCTOR; ESCALANTE,
15 CORRECTIONAL OFFICER (C/O);
16 ALLAMBY, LIEUTENANT; WHITEHEAD,
R.N.; M. RUIZ, DOCTOR; SINAGA,
REGISTERED NURSE,

17 Defendants.
18

CASE NO. 08-CV-238-JLS (CAB)

**ORDER: (1) ADOPTING REPORT
AND RECOMMENDATION AND
(2) GRANTING DEFENDANTS'
MOTION TO DISMISS**

(Doc. Nos. 49 & 55)

19 Presently before the Court is Magistrate Judge Cathy Ann Bencivengo's Report and
20 Recommendation ("R&R") advising this Court to grant Defendants' motion to dismiss. (Doc. No. 55.)
21 Plaintiff did not timely file objections.

22 Rule 72(b) of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1) set forth the
23 duties of a district court in connection with a magistrate judge's report and recommendation. "The
24 district court must make a *de novo* determination of those portions of the report . . . to which objection
25 is made," and "may accept, reject, or modify, in whole or in part, the findings or recommendations
26 made by the magistrate." 28 U.S.C. 636(b)(1)(c); *see also United States v. Remsing*, 874 F.2d 614,
27 617 (9th Cir. 1989); *United States v. Raddatz*, 447 U.S. 667, 676 (1980). However, in the absence of
28 timely objection, the Court need "only satisfy itself that there is no clear error on the face of the

1 record.” Fed. R. Civ. P. 72, Advisory Committee Notes (1983) (citing *Campbell v. U.S. Dist. Court*,
2 501 F.2d 196, 206 (9th Cir. 1974)).

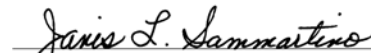
3 Since Plaintiff failed to timely object to Magistrate Judge Bencivengo’s R&R, the Court need
4 only ensure that it is not clearly erroneous given the record. Having done so, the Court finds Judge
5 Bencivengo’s opinion is thorough, well reasoned, and no contains no clear error. Therefore, the Court
6 **ADOPTS** the R&R in full. The Court therefore **GRANTS** Defendants’ motion to dismiss as follows:

- 7 1) the Eighth Amendment deliverate indifference claims in Cout One (and Count Two in
8 the Form Complaint) against Defendants Canlas, Whitehead, and Escalante are
9 **DISMISSED WITH PREJUDICE;**
- 10 2) the negligence claim (and all other state law claims) in Cout One (and Count Towo in
11 the Form Complaint) against Defendants Canlas, Whitehead, and Escalante are
12 **DISMISSED WITHOUT PREJUDICE;**
- 13 3) the claim for excessive force/First Amendment (and related federal and state law
14 claims) in Count Three against defendants Escalante and Allamby are **DISMISSED**
15 **WITHOUT PREJUDICE;**
- 16 4) the claim for retaliation (and related federal and state law claims) in Count Four
17 against defendants Sinaga and Ruiz are **DISMISSED WITHOUT PREJUDICE.**

18 Since all claims in the Second Amended Complaint have now been dismissed, the Clerk shall close
19 the file.

20 IT IS SO ORDERED.

21
22 DATED: August 5, 2010

23 
24 Honorable Janis L. Sammartino
25 United States District Judge
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